```
1
                    UNITED STATES DISTRICT COURT
                    EASTERN DISTRICT OF VIRGINIA
 2
                         ALEXANDRIA DIVISION
 3
    UNITED STATES, et al., : Civil Action No.: 1:23-cv-108
 4
                 Plaintiffs, :
 5
                                 Friday, March 31, 2023
         versus
 6
    GOOGLE LLC,
 7
                 Defendant.
       -----x
 8
            The above-entitled hearing was heard before the
 9
    Honorable John F. Anderson, United States Magistrate Judge.
    This proceeding commenced at 10:35 a.m.
10
                       APPEARANCES:
11
    FOR THE PLAINTIFFS:
                          GERARD MENE, ESQUIRE
12
                          OFFICE OF THE UNITED STATES ATTORNEY
                          2100 Jamieson Avenue
13
                          Alexandria, Virginia 22314
                           (703) 299-3700
14
                          JULIA WOOD, ESQUIRE
15
                          MICHAEL WOLIN, ESQUIRE
                          UNITED STATES DEPARTMENT OF JUSTICE
16
                          ANTITRUST DIVISION
                           450 Fifth Street, NW
17
                          Washington, D.C. 20530
                           (202) 894-4266
18
                          TYLER HENRY, ESQUIRE
19
                          OFFICE OF THE ATTORNEY GENERAL
                          OFFICE OF THE SOLICITOR GENERAL
20
                          202 North Ninth Street
                          Richmond, Virginia 23219
2.1
                           (804) 786-7704
22
2.3
2.4
25
```

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

2.4

25

address that appropriately? "Documents or data (including documents or data relied upon by an expert witness in his or her report) produced by any party pursuant to the disclosure obligations set forth in the scheduling order relating to expert discovery or in any other agreement or order." MS. WOOD: I can tell you, Your Honor, that as I understand -- if by B they mean to suggest that their experts are not going to rely on material that was not produced in fact discovery, then I agree, that takes care of In our meet-and-confer, we've had multiple sessions about this. That is not my understanding of their position, but they can clarify that. But if by B they mean they do not intend for their experts to rely on material outside the fact discovery cutoff, then I think our only agreement is about commercially-available data. The one other thing I should add just for completeness, but I think this could be, you know, taken up at a different date, is there may come a time, if there is a liability finding here, that the Court would need to consider appropriate equitable remedies. We acknowledge that the scope of material that might need to be reviewed for equitable remedy purposes might need to reflect more current data. And so we're not taking the position that they're precluded forever from 19

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

2.3

2.4

25

```
producing new material in that regard. That was really
honestly more for their benefit and for the Court's benefit.
We didn't want the Court -- we wanted the Court to
understand that we were sympathetic -- would be sympathetic
to that concern.
          If they don't want that provision, I think we can
deal with that when and if that occurs, but I think we are
most concerned that experts not be allowed to rely on
material outside the fact discovery cutoff.
          THE COURT: Okay.
          MS. WOOD: Thank you, Your Honor.
          THE COURT: Mr. Ewalt, let me have you address --
and I think it's a valid concern. I mean, you know, in our
typical cases, the discovery cutoff date is both for fact
and expert discovery, so we don't have to deal with this
issue very often. But the idea that fact discovery sets the
parameters upon which this case will end up being tried has
some appeal to me. I mean, there has to be an end to it at
some point. And, you know, if fact discovery has been
set -- we've set a date for when all the fact discovery
needs to be done. Obviously if there's a motion to compel,
and something has to be done after that, that will, you
know, have to get swept into that. But, you know, giving
someone the unfettered ability to continue to go out and
gather new facts and to do further fact-finding efforts or
                                                          20
```